

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

**CIVIL CONFERENCE  
MINUTE ORDER**

BEFORE: JAMES ORENSTEIN  
U.S. MAGISTRATE JUDGE

DATE: 3/11/10  
TIME: 10:30 a.m.

*Raffaele Ocello v. City of New York, et al.*  
**05-CV-3725 (DGT) (JO)**

TYPE OF CONFERENCE: Status

APPEARANCES:	Plaintiff	<u>No appearance</u>
	City	<u>Cynthia Goldman, Daphna Heisler</u>
	Harris	<u>James V. Sawicki</u>
	Gates, Great Lakes	<u>Robert G. Clyne, John Olson</u>

SCHEDULING: There are no further conferences scheduled before me at this time.

THE FOLLOWING RULINGS WERE MADE:

1. As discussed on the record, I declined to renew my earlier recommendation that the pleadings of defendants Gates and Great Lakes (collectively, "Gates") be stricken as a sanction for discovery violations. I also declined to impose the sanction of precluding evidence or defenses. Instead, I impose the lesser sanction, previously endorsed by Gates, of requiring Gates to reimburse the costs, including reasonable attorneys' fees, incurred by defendants City and Harris in litigating the motions arising from Gates's discovery violations, and also to bear all costs, including reasonable attorneys' fees, of all remaining fact discovery in this litigation. To the extent any future expert discovery is also attributable to Gates's past discovery violations, I will order the reimbursement of such costs on a case-by-case basis.
2. With respect to the impleader of potential third-party defendants White Marine and Frankfurt, I directed Gates to make an election no later than March 25, 2010, among three options: (a) waiving the right to seek any relief against those parties based on the events at issue in this litigation, (b) impleading the parties and bearing the associated discovery costs pursuant to the order set forth above, and (c) reserving the right to seek relief against the absent parties in separate litigation provided the parties to this litigation agree to terms that will suffice to hold harmless in such litigation defendants City and Harris.
3. After Gates makes its election, the parties will confer and, no later than April 1, 2010, submit a proposal for completing all remaining pretrial tasks. Upon reviewing their submission, I will schedule further proceedings as appropriate.

SO ORDERED

/s/ James Orenstein  
JAMES ORENSTEIN  
U.S. Magistrate Judge